

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LOCALS 302 AND 612 OF THE
INTERNATIONAL UNION OF
OPERATING ENGINEERS
CONSTRUCTION INDUSTRY HEALTH
AND SECURITY FUND , et al.,

Plaintiffs,

v.

509 EXCAVATING LLC, a Washington
limited liability company,

Defendant.

NO. C19-01527-JLR

MOTION FOR AND AFFIDAVIT FOR
ENTRY OF DEFAULT JUDGMENT

Pursuant to Rule 55(b) of the Federal Rules of Civil Procedure, Plaintiffs pray
the Court for judgment against Defendant, 509 Excavating LLC.

This motion is based on documents on file with the court, upon the attached
affidavit of Russell J. Reid and exhibits hereto, and upon the Declaration of Adam
Keck and exhibits thereto, which evidence Plaintiffs are entitled to judgment against
Defendant, 509 Excavating LLC.

1 DATED this 23~~rd~~ day of October, 2019.

2
3 REID, McCARTHY, BALLEW & LEAHY,
4 L.L.P.

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6
7 Russell J. Reid, WSBA #2560
8 Attorney for Plaintiffs

9 AFFIDAVIT

10 STATE OF WASHINGTON)
11) ss.
12 County of King)

13 RUSSELL J. REID, being first duly sworn on oath, deposes and says:

14 1. I am one of the Plaintiffs' attorneys and make this affidavit in support of
15 their motion for judgment after entry of default.

16 2. Plaintiffs brought this action to collect contributions, dues, liquidated
17 damages, interest, attorneys' fees and costs due them by reason of Defendant's
18 employment of members of the bargaining unit represented by Local 302 of the
19 International Union of Operating Engineers, with which the Defendant has a valid
20 labor contract, and by reason of its acceptance of Plaintiff Trusts' Agreements &
21 Declarations of Trust (hereinafter "Trust Agreements").

22 3. As evidenced by the records on file with the Court, an Order of Default
23 has been entered against Defendant. (See **Exhibit A** attached).
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1 4. The Court has jurisdiction over the subject matter of this action under
2 Section 502 (e)(1) and (f) of the Employee Retirement Income Security Act of 1974
3 ("ERISA"), 29 U.S.C. §1132 (e)(1) and (f) and under Section 301 (a) of the Taft-
4 Hartley Act, 29 U.S.C. §185 (a).

5 5. Venue is proper in this district under Section 502 (e)(2) of ERISA, 29
6 U.S.C. §1132 (e)(2), because plaintiff Trusts are administered in this district.

7 6. As alleged in COUNT ONE, paragraph I of Plaintiffs' complaint, Plaintiff
8 Trusts are unincorporated associations operating as Trust Funds pursuant to Section
9 302 of the Labor Management Relations Act of 1947, as amended, under the
10 respective names of Locals 302 and 612 of the International Union of Operating
11 Engineers-Construction Industry Health & Security Fund, Locals 302 and 612 of the
12 International Union of Operating Engineers-Employers Construction Industry
13 Retirement Fund, and Western Washington Operating Engineers-Employers Training
14 Trust Fund, to provide medical, retirement, and training benefits to eligible
15 participants. Plaintiffs' offices are located in King County, Washington.

16 7. As alleged in COUNT ONE, paragraph V of Plaintiffs' complaint,
17 Defendant is bound to a collective bargaining agreement (see, **Keck Decl. ¶7, Ex. A**)
18 with Local 302 of the International Union of Operating Engineers (hereinafter
19 "Local"), under which Defendant is required to promptly and fully report for and pay
20 monthly contributions to the Plaintiffs at varying, specified rates for each hour of
21 compensation Defendant pays to its employees who are members of the bargaining
22 unit represented by the Local (such bargaining unit members are any of Defendant's
23 unit represented by the Local (such bargaining unit members are any of Defendant's
24 unit represented by the Local (such bargaining unit members are any of Defendant's
25 unit represented by the Local (such bargaining unit members are any of Defendant's

1 part time or full time employees who perform any work tasks covered by Defendant's
2 labor contract with the Local, whether or not those employees actually join the
3 Local).

4 8. As alleged in COUNT ONE, paragraph VI of Plaintiffs' complaint,
5 Defendant accepted Plaintiffs' respective Agreements and Declarations of Trust and
6 thereby agreed to pay to the Operating Engineers Construction Industry Health and
7 Security Trust and to the Operating Engineers-Employers Construction Industry
8 Retirement Fund liquidated damages equal to twelve percent (12%) of all delinquent
9 and delinquently paid contributions, or \$25.00 per month, whichever is greater, and
10 twelve percent (12%) annual interest accruing upon each monthly contribution
11 delinquency from the first day thereof until fully paid, as well as all attorneys fees and
12 costs, including audit expenses if applicable, which Plaintiffs incur in the collection of
13 all of Defendant's unpaid obligations. See, **Keck Decl., Ex. B (Article II, Section 9,**
14 **pp. 12-14), Ex. C (Article II, Section 9, pp. 10-12), and Ex. D (Article II, Section 9,**
15 **pp. 4-5)).**

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18 9. As alleged in COUNT TWO, paragraph I of Plaintiffs' complaint, Plaintiff
19 Local 302 of the International Union of Operating Engineers is a labor organization
20 with its principal offices in King County, and brings this action pursuant to Section
21 301 of the Labor Management Relations Act of 1947, as amended.

22 10. As alleged in COUNT TWO, paragraph II of Plaintiffs' complaint,
23 Defendant is a Washington limited liability company.
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1 11. As alleged in COUNT TWO, paragraph III of Plaintiffs' complaint,
2 Defendant entered into an agreement with the Local, whereunder Defendant agreed
3 to deduct from the periodic paychecks of Defendant's employees who are
4 represented by the Local specified amounts for each hour of compensation
5 Defendant pays to those employees and to remit the total thus deducted each month
6 to the Trusts no later than the fifteenth (15th) of the month immediately following the
7 month in which such deductions were made. (Keck Decl. (Ex. A).
8

9 12. Defendant submitted its reports for the period June 2019 through
10 August 2019 (**Exhibit E** attached to Adam Keck's Dec.), but failed to pay the
11 contributions and dues owed to the Trust for that period. Accordingly, Defendant is
12 obligated to the Trust Funds for contributions in the amount of \$91,590.55, for dues
13 in the amount of \$5,673.55, for liquidated damages in the amount of \$11,014.25, and
14 for interest (thru 10/25/19) in the amount of \$2,038.35 for the period June 2019
15 through August 2019.
16

17 13. The Excel spreadsheet, which is attached as **Exhibit F** to **Adam**
18 **Keck's Declaration**, reflects the date when contributions and dues were due, and
19 also includes calculations of liquidated damages and pre-judgment interest. Exhibit
20 F shows the amounts owed for the Health and Welfare Trust, the Pension Trust and
21 the Training Trust. This information is based on the employer remittance reports
22 found as Exhibit E to Keck's Declaration. Liquidated damages are calculated at a
23 rate of 12% of the amount of the delinquent contributions still owed for the Health and
24 Welfare Trust Fund, the Pension Trust Fund and the Training Trust Fund. Interest
25

1 accrues until the contributions are paid in full. Interest is only calculated based on
2 the delinquent contributions still owed. Interest accrues from the date contributions
3 are due at a rate of 12% per annum until paid in full. Dues are calculated at a rate of
4 2% of gross wages paid out by 509 Excavating LLC. This is calculated on the
5 remittance reports found as Exhibit E to Adam Keck's Declaration. These
6 calculations are then inserted into the Excel spreadsheet that is found as Exhibit F to
7 Adam Keck's Declaration.

8
9 14. Plaintiff Trusts have incurred attorneys' fees of \$543.00 and court costs
10 of \$461.00 in connection with Defendant's unpaid obligations. **Exhibit B**, attached
11 hereto, sets forth the true and correct itemization of attorney and non-attorney time
12 spent on this matter. The attorney's hourly rate does not incorporate the cost of work
13 performed by non-attorneys. Consistent with *Trustees of Construction Industry v.*
14 *Redland Insurance Company*, 460 F.3d 1253 (9th cir., 2006) the award of fees for
15 both attorneys and non-attorneys is customary and fees for both attorneys and non-
16 attorneys have been approved by numerous judges in the United States District
17 Court for the Western District of Washington. True and correct copies of the Orders
18 awarding fees and declarations showing the fees awarded were for work by attorneys
19 and non-attorneys are attached hereto as **Exhibit C**.

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21 15. The attorney fees incurred by Plaintiffs include work performed by
22 attorney, Russell J. Reid, and non-attorneys, Shelly Azus and Shelly Trahin.

23 16. Based upon the pleadings heretofore filed with the Court, upon the
24 foregoing information and exhibits hereto, it has been evidenced as follows:
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- i. This action is properly within the jurisdiction of the Court and venue is proper;
- ii. Defendant has contractual obligations to promptly and fully to report for and pay contributions and dues to Plaintiff Trusts on behalf of each of its employees who are members of the bargaining unit represented by the Local;
- iii. Defendant specifically accepted the Plaintiff Trusts' Trust Agreements and thereby agreed to pay liquidated damages equal to twelve percent (12%) of all delinquent and delinquently paid contributions, or \$25.00 per month, whichever is greater, and twelve percent (12%) annual interest accruing upon each monthly contribution delinquency from the first day thereof until fully paid, as well as all attorneys fees and costs, which Plaintiff Trusts incurred in the collection of all of Defendant's unpaid obligations.

17. Defendant failed to pay its contributions and dues for the period June 2019 through August 2019. Accordingly, Plaintiffs are entitled to take judgment against Defendant for the total amount of \$111,320.70: \$91,590.55 in contributions, \$5,673.55 in dues, \$11,014.25 in liquidated damages; \$2,038.35 in pre-judgment interest; \$543.00 in attorneys' fees and \$461.00 in costs. This is the total amount owed for all three trusts: Locals 302 and 612 of the International Union of Operating Engineers-Construction Industry Health & Security Fund, Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry

1 Retirement Fund, and Western Washington Operating Engineers-Employers Training
2 Trust Fund, and Local 302.

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4 I declare under penalty of perjury under the laws of the United States of
5 America, that the foregoing is true and correct.
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8 Executed this 24th day of October, 2019, at Seattle, King County, Washington.
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11 _____
Russell J. Reid, WSBA No. 2560

12 SUBSCRIBED AND SWORN to before me this 24th day of October, 2019.
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Shelly Azus

Print Name: Shelly Azus
Notary Public in and for the State of
Washington, residing at Covington WA
My commission expires: 12/9/22